

REMARKS

After entry of the above amendments, the claims pending in the subject application are 6-31. Reconsideration of this application based on the Amendments and Remarks presented herein is respectfully requested. Claim 6 has been amended. Support for the amendment can be found on page 4, lines 12-13. Support for new claims 30 and 31 can be found on pages 9 and 10 in Examples 1 and 2.

The addition of independent claims 30 and 31 does not exceed the number of independent claims previously paid for, but their addition exceeds the total number of claims previously paid for. The Director - U.S. Patent and Trademark Office is hereby authorized to charge Deposit Account 03-2455 the claim fees necessary for entry of this amendment.

Concurrently with this response, a response is being filed in copending Serial No. 10/406,123. Previously, the file history for this copending application was cited in an Information Disclosure Statement filed on September 27, 2006. A copy of the response for Serial No. 10/406,123 is also being submitted to supplement the prior filing.

35 U.S.C. §103 REJECTIONS

Claims 6-29 were rejected under 35 U.S.C. §103(a) as being unpatentable over WO 01/85103 to Laden et al. in view of Flick (Cosmetic Additives: An Industrial Guide), and United States Patent No. 4,673,526 to Zabotto et al.

Zabotto '526 discloses that when a wax is present in the composition, the ratio of oil or oil mixture to wax is generally 1:1 to 3:1 (column 2, lines 61-62). If Zabotto '526 were combined with WO 01/85103, the combination would also require this ratio. In Example 3 in Zabotto '526 in column 5, the amount of magnesium stearate is 10 weight%. In Example 5 in Zabotto '526, the amount of HOSTAPHAT KW 340N (an emulsifier, which is an ester of phosphoric acid and ethoxylated fatty acid) is 14 weight%.

Amended claim 6 now recites that the emulsifying agent is present in an amount of no more than 10 weight %, the at least one water immiscible emollient oil is present in a minimum amount of 30 weight % of the composition, and that the wax is present in

an amount that is no more than 7 weight % of the composition. The resulting amount of oil is at least greater than 4.3 times the amount of wax in the composition.

Zabotto '526 alone or in combination with WO 01/85103 does not disclose or suggest the ratio of oil to wax in claim 6 that results from the amounts of the oil and the wax required by the claim along with the selection for the amount of the oil, the amount of the emulsifying agent, and the amount of the wax. The currently claimed ratio of oil to wax that results from the currently claimed amounts of oil and wax is outside of the literal range disclosed by the cited references and outside any range that might be obviously suggested.

Also, the claimed combination of materials and amount of materials results in increased phase stability as compared to compositions not having the combination (see page 2, line 23 and page 5, lines 24-32). The increased phase stability is not suggested by the cited references.

Therefore, it is respectfully submitted that claims 6-29 are patentable over WO 01/85103 to Laden et al. in view of Flick (Cosmetic Additives: An Industrial Guide), and United States Patent No. 4,673,526 to Zabotto et al.

New claims 30 and 31 are not disclosed or suggested by the cited references. The cited references do not provide direction to make the selection of the claimed materials and in their claimed amounts to arrive at the combination that is claimed.

In order to anticipate a composition when a reference discloses multiple variables and combinations, the reference must describe the composition with enough detail such that the composition is in the possession of the public. *In re Brown*, 329 F. 2d 1006, 1011, 141 U.S.P.Q. 245, 249 (C.C.P.A. 1964). Also, the reference must clearly and unequivocally disclose the composition or direct those skilled in the art to the composition without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the reference. *In re Arkley*, 455 F.2d 586, 587, 172 U.S.P.Q. 524, 526 (C.C.P.A. 1972). Additionally, under the obviousness standard, while it may be obvious to try to vary all parameters or try each of numerous possible choices, the reference must suggest the combination and selection of parameters for the composition. *In re O'Farrell*, 853 F.2d 894, 903, 7 U.S.P.Q.2d 1673, 1681 (Fed. Cir. 1988).

Therefore, it is respectfully submitted that new claims 30 and 31 are patentable over the cited references.

In view of the amendments and remarks contained above, Applicants respectfully request reconsideration of the application, withdrawal of the 35 U.S.C. §103 rejections, and request that a Formal Notice of Allowance be issued for claims 6-31. Should the Examiner have any questions about the above remarks, the undersigned attorney would welcome a telephone call.

Respectfully submitted,

Johansson *et al.*

/Michael F. Morgan/

Date: March 5, 2007

By: Michael F. Morgan

Reg. No. 42,906

COLGATE-PALMOLIVE COMPANY

909 River Road; P.O. Box 1343

Piscataway, NJ 08855-1343

Telephone: (732) 878-7606

MFM/dlh